

House Engrossed Senate Bill

State of Arizona  
Senate  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 50

## **SENATE BILL 1236**

AN ACT

AMENDING SECTIONS 34-221 AND 34-603, ARIZONA REVISED STATUTES; RELATING TO  
PUBLIC CONSTRUCTION PROJECTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 34-221, Arizona Revised Statutes, is amended to read:

34-221. Contract with successful bidder; payments to contractor; security; recovery of damages by contractor for delay; progress payments

A. The agent shall enter into a contract with the lowest responsible bidder whose proposal is satisfactory, except that in counties with a population of more than one million persons according to the most recent United States decennial census, in determining the lowest responsible bidder under this section, the board of supervisors may consider, for no more than five projects, the time of completion proposed by the bidder, the value over time of completed services and facilities and the value over time of interrupted services if the board determines that this procedure will serve the public interest by providing a substantial fiscal benefit or that the use of the traditional awarding of contracts is not practicable for meeting desired construction standards or delivery schedules and if the formula for considering the time of completion is specifically stated in the bidding information.

B. IN DETERMINING THE LOWEST RESPONSIBLE BIDDER FOR A HORIZONTAL CONSTRUCTION PROJECT USING THE DESIGN-BID-BUILD PROJECT DELIVERY METHOD, AN AGENT MAY CONSIDER THE TIME OF COMPLETION PROPOSED BY THE BIDDER IF THE AGENT DETERMINES THAT THIS PROCEDURE WILL SERVE THE PUBLIC INTEREST BY PROVIDING A SUBSTANTIAL FISCAL BENEFIT OR THAT THE USE OF THE TRADITIONAL AWARDED OF CONTRACTS IS NOT PRACTICABLE FOR MEETING DESIRED CONSTRUCTION STANDARDS OR DELIVERY SCHEDULES AND IF THE FORMULA FOR CONSIDERING THE TIME OF COMPLETION IS SPECIFICALLY STATED IN THE BIDDING INFORMATION.

~~B.~~ C. The terms of a contract entered into pursuant to subsection A shall include the following items:

1. A surety company bond or bonds as required under the provisions of this article.

2. The owner by mutual agreement may make progress payments on contracts of less than ninety days and shall make monthly progress payments on all other contracts as provided for in this paragraph. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under such contract may include payment for material and equipment, but to insure the proper performance of such contract, the owner shall retain ten per cent of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the contract. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the owner or owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The owner may withhold an amount from the progress payment sufficient to pay

1 the expenses the owner reasonably expects to incur in correcting the  
2 deficiency set forth in the written finding. The progress payments shall be  
3 paid on or before fourteen days after the estimate of the work is certified  
4 and approved. The estimate of the work shall be deemed received by the owner  
5 on submission to any person designated by the owner for the submission,  
6 review or approval of the estimate of the work.

7 3. When the contract is fifty per cent completed, one-half of the  
8 amount retained including any securities substituted under paragraph 5 shall  
9 be paid to the contractor upon the contractor's request provided the  
10 contractor is making satisfactory progress on the contract and there is no  
11 specific cause or claim requiring a greater amount to be retained. After the  
12 contract is fifty per cent completed, no more than five per cent of the  
13 amount of any subsequent progress payments made under the contract may be  
14 retained providing the contractor is making satisfactory progress on the  
15 project, except that if at any time the owner determines satisfactory  
16 progress is not being made ten per cent retention shall be reinstated for all  
17 progress payments made under the contract subsequent to the determination.

18 4. Upon completion and acceptance of each separate building, public  
19 work or other division of the contract on which the price is stated  
20 separately in the contract, except as qualified in paragraph 5, payment may  
21 be made in full, including retained percentages thereon, less authorized  
22 deductions. In preparing estimates, the material and equipment delivered on  
23 the site to be incorporated in the job shall be taken into consideration in  
24 determining the estimated value by the architect or engineer.

25 5. Ten per cent of all estimates shall be retained by the agent as a  
26 guarantee for complete performance of the contract, to be paid to the  
27 contractor within sixty days after completion or filing notice of completion  
28 of the contract. Retention of payments by a purchasing agency longer than  
29 sixty days after final completion and acceptance requires a specific written  
30 finding by the purchasing agency of the reasons justifying the delay in  
31 payment. No purchasing agency may retain any monies after sixty days which  
32 are in excess of the amount necessary to pay the expenses the purchasing  
33 agency reasonably expects to incur in order to pay or discharge the expenses  
34 determined by the purchasing agency in the finding justifying the retention  
35 of monies. In lieu of the retention provided in this section, the agent  
36 shall, at the option of the contractor, accept as a substitute an assignment  
37 of time certificates of deposit of banks licensed by this state, securities  
38 of or guaranteed by the United States of America, securities of this state,  
39 securities of counties, municipalities and school districts within this state  
40 or shares of savings and loan institutions ASSOCIATIONS authorized to  
41 transact business in this state, in an amount equal to ten per cent of all  
42 estimates which shall be retained by the agent as a guarantee for complete  
43 performance of the contract. In the event the agent accepts substitute  
44 security as described in this paragraph for the ten per cent retention, the  
45 contractor shall be entitled to receive all interest or income earned by such

1 security as it accrues and all such security in lieu of retention shall be  
2 returned to the contractor by the agent within sixty days after final  
3 completion and acceptance of all material, equipment and work covered by the  
4 contract if the contractor has furnished the agent satisfactory receipts for  
5 all labor and material billed and waivers of liens from any and all persons  
6 holding claims against the work. In no event shall the agent accept a time  
7 certificate of deposit of a bank or shares of a savings and loan institution  
8 ASSOCIATION in lieu of the retention specified unless accompanied by a signed  
9 and acknowledged waiver of the bank or savings and loan association of any  
10 right or power to setoff against either the agent or the contractor in  
11 relationship to the certificates or shares assigned.

12 6. In any instance where the agent has accepted substitute security  
13 as provided in paragraph 5, any subcontractor undertaking to perform any part  
14 of such public work shall be entitled to provide substitute security to the  
15 contractor upon terms and conditions similar to those described in paragraph  
16 5, and such security shall be in lieu of any retention under the subcontract.

17 ~~E.~~ D. No contract for construction may materially alter the rights of  
18 any contractor, subcontractor or material supplier to receive prompt and  
19 timely payment required to be included in the contract under subsection B-  
20 C.

21 ~~D.~~ E. The contract shall be signed by the agent and the contractor.

22 ~~E.~~ F. A contract for the procurement of construction shall include a  
23 provision which provides for negotiations between the agent and the  
24 contractor for the recovery of damages related to expenses incurred by the  
25 contractor for a delay for which the agent is responsible, which is  
26 unreasonable under the circumstances and which was not within the  
27 contemplation of the parties to the contract. This section shall not be  
28 construed to void any provision in the contract which requires notice of  
29 delays, provides for arbitration or other procedure for settlement or  
30 provides for liquidated damages.

31 ~~F.~~ G. The contractor shall pay to the contractor's subcontractors or  
32 material suppliers and each subcontractor shall pay to the subcontractor's  
33 subcontractor or material supplier, within seven days of receipt of each  
34 progress payment, unless otherwise agreed in writing by the parties, the  
35 respective amounts allowed the contractor or subcontractor on account of the  
36 work performed by subordinate subcontractors, to the extent of each such  
37 subcontractor's interest therein, except that no contract for construction  
38 may materially alter the rights of any contractor, subcontractor or material  
39 supplier to receive prompt and timely payment as provided under this  
40 section. Such payments to subcontractors or material suppliers shall be  
41 based on payments received pursuant to this section. Any diversion by the  
42 contractor or subcontractor of payments received for work performed on a  
43 contract, or failure to reasonably account for the application or use of such  
44 payments, constitutes grounds for disciplinary action by the registrar of  
45 contractors. The subcontractor or material supplier shall notify the

1 registrar of contractors and the purchasing agency in writing of any payment  
2 less than the amount or percentage approved for the class or item of work as  
3 set forth in this section.

4 ~~G.~~ H. A subcontractor may notify the purchasing agency in writing  
5 requesting that the subcontractor be notified by the purchasing agency in  
6 writing within five days from payment of each progress payment made to the  
7 contractor. The subcontractor's request remains in effect for the duration  
8 of the subcontractor's work on the project.

9 ~~H.~~ I. Nothing in this chapter prevents the contractor or  
10 subcontractor, at the time of application and certification to the owner or  
11 contractor, from withholding such application and certification to the owner  
12 or contractor for payment to the subcontractor or material supplier for  
13 unsatisfactory job progress, defective construction work or materials not  
14 remedied, disputed work or materials, third party claims filed or reasonable  
15 evidence that a claim will be filed, failure of a subcontractor to make  
16 timely payments for labor, equipment and materials, damage to the contractor  
17 or another subcontractor, reasonable evidence that the subcontract cannot be  
18 completed for the unpaid balance of the subcontract sum or a reasonable  
19 amount for retention that does not exceed the actual percentage retained by  
20 the owner.

21 ~~I.~~ J. If any payment to a contractor is delayed after the date due  
22 interest shall be paid at the rate of one per cent per month or fraction of  
23 a month on such unpaid balance as may be due.

24 ~~J.~~ K. If any periodic or final payment to a subcontractor is delayed  
25 by more than seven days after receipt of the periodic or final payment by the  
26 contractor or subcontractor, the contractor or subcontractor shall pay a  
27 subordinate subcontractor or material supplier interest, beginning on the  
28 eighth day, at the rate of one per cent per month or a fraction of a month  
29 on such unpaid balance as may be due.

30 Sec. 2. Section 34-603, Arizona Revised Statutes, is amended to read:

31 34-603. Procurement of professional services and  
32 construction-manager-at-risk, design-build and  
33 job-order-contracting construction services;  
34 definition

35 A. Except for services an agent procures pursuant to section 34-103  
36 or 34-604, an agent shall procure the following services pursuant to this  
37 section:

- 38 1. Architect services.
- 39 2. Construction-manager-at-risk construction services.
- 40 3. Design-build construction services.
- 41 4. Engineer services.
- 42 5. Job-order-contracting construction services.
- 43 6. Landscape architect services.
- 44 7. Assayer services.
- 45 8. Geologist services.

1           9. Land surveying services.

2           B. An agent shall provide notice of each procurement of professional  
3 services or construction services specified in this section and shall award  
4 contracts on the basis of demonstrated competence and qualifications for the  
5 type of professional services or construction services pursuant to the  
6 procedures prescribed in this section.

7           C. In the procurement of professional services or construction  
8 services pursuant to this section, an agent shall:

9           1. Issue a request for qualifications for each contract and publish  
10 notice of the request for qualifications in the same manner as provided in  
11 section 28-6713, subsection A. The request for qualifications shall include  
12 the number of persons or firms to be included on the short list. In a  
13 request for qualifications for a horizontal construction project, at least  
14 three but not more than five persons or firms shall be on the short list. In  
15 all other requests for qualifications, three persons or firms shall be on the  
16 short list.

17          2. Initiate an appropriately qualified selection committee for each  
18 contract. If the agent is procuring professional services, the agent shall  
19 determine the number and qualifications of the selection committee members.  
20 A selection committee for the procurement of construction services shall not  
21 have more than seven members, except that, if the contract involves the agent  
22 and additional governmental or private participants, the number of members  
23 of the selection committee shall be increased by one for each additional  
24 participant, except that the maximum number of members of the selection  
25 committee is nine. The selection committee for construction services shall  
26 include at least one person who is a senior management employee of a licensed  
27 contractor and one person who is an architect or an engineer who is  
28 registered pursuant to section 32-121. A contractor is not required to serve  
29 on the selection committee if the contract does not include construction and  
30 if the contract does not require delivery of a design or a set of  
31 construction documents. These members may be employees of the agent or  
32 outside consultants. Outside contractors, architects and engineers serving  
33 on a selection committee shall not receive compensation from the agent for  
34 performing this service, but the agent may elect to reimburse outside  
35 contractors, architects and engineers for travel, lodging and other expenses  
36 incurred in connection with service on a selection committee. A person who  
37 is a member of a selection committee shall not be a contractor under the  
38 contract or provide construction, construction services, materials or  
39 services under the contract. The selection committee shall:

40          (a) Evaluate the statements of qualifications and performance data  
41 that are submitted in response to the agent's request for qualifications for  
42 the proposed contract.

43          (b) If determined by the agent and included by the agent in the  
44 request for qualifications, conduct discussions with at least the number of  
45 persons or firms to be included on the short list as stated in the request

1 for qualifications but not more than the number of persons or firms to be  
2 included on the short list plus two as specified in the request for  
3 qualifications regarding the contract and the relative methods of approach  
4 for furnishing the required professional services or construction services.

5 (c) In order of preference, based on criteria established and  
6 published by the selection committee and included in the request for  
7 qualifications, select a short list of persons or firms the selection  
8 committee deems to be the most qualified to provide the professional services  
9 or construction services. The number of persons or firms on the short list  
10 shall be the number of persons or firms specified in the request for  
11 qualifications, except that:

12 (i) If a smaller number of responsive and responsible persons or firms  
13 respond to the solicitation, the selection committee may proceed with the  
14 selection process with the remaining persons or firms if at least two persons  
15 or firms remain or the selection committee may readvertise pursuant to this  
16 subsection as the selection committee deems necessary or appropriate.

17 (ii) As to professional services only, if only one responsive and  
18 responsible person or firm responds to the solicitation, the agent may  
19 proceed with only one person or firm on the short list and may award the  
20 contract to a single person or firm if the agent determines in writing that  
21 the fee negotiated pursuant to subsection E of this section is fair and  
22 reasonable and that either other prospective persons or firms had reasonable  
23 opportunity to respond or there is not adequate time for a resolicitation.

24 (iii) For professional services and construction services, if a person  
25 or firm on the short list withdraws or is removed from the selection process  
26 and it is in the best interest of the agent, the selection committee may  
27 replace that person or firm with another person or firm that submitted  
28 qualifications and that is selected by the selection committee.

29 (d) Base the selection and order of preference on demonstrated  
30 competence and qualifications only.

31 (e) Not request or consider fees, price, man-hours or any other cost  
32 information in the selection or order of preference.

33 D. An agent shall award a contract for professional services or for  
34 construction services to one of the persons or firms on the short list  
35 prepared pursuant to subsection C of this section as provided in subsection  
36 E or F of this section, except that, if fewer than the number of persons or  
37 firms on the short list respond to the request for proposals pursuant to  
38 subsection F of this section but at least two persons or firms on the short  
39 list submit responsive proposals or if one or more of the persons or firms  
40 on the short list drop out of the selection process pursuant to subsection  
41 E or F of this section:

42 1. If there are three or more remaining persons or firms, the agent  
43 shall proceed with the selection process.

44 2. If there are only two remaining persons or firms, as the agent  
45 deems necessary and appropriate, the agent may elect to proceed with the

1 selection process with the two persons or firms or may elect to terminate the  
2 selection process and may elect to readvertise pursuant to subsection C of  
3 this section.

4 3. If there is only one remaining person or firm, the agent shall  
5 terminate the selection process and may elect to readvertise pursuant to  
6 subsection C of this section, except that as to professional services only,  
7 the agent may award the contract to a single person or firm if the agent  
8 determines in writing that the fee negotiated pursuant to subsection E of  
9 this section is fair and reasonable and that either other prospective persons  
10 or firms had reasonable opportunity to respond or there is not adequate time  
11 for a resolicitation.

12 E. An agent shall enter into negotiations for a contract with the  
13 highest qualified person or firm for the professional services or for the  
14 construction services. The negotiations shall include consideration of  
15 compensation and other contract terms that the agent determines to be fair  
16 and reasonable to the agent. In making this decision, the agent shall take  
17 into account the estimated value, the scope, the complexity and the nature  
18 of the professional services or construction services to be rendered. If the  
19 agent is not able to negotiate a satisfactory contract with the person or  
20 firm considered to be the most qualified at compensation and other contract  
21 terms the agent determines to be fair and reasonable, the agent shall  
22 formally terminate negotiations with that person or firm. The agent may  
23 undertake negotiations with the next most qualified person or firm in  
24 sequence until an agreement is reached or a determination is made to reject  
25 all persons or firms on the short list. If a contract for construction  
26 services is entered into pursuant to this subsection, construction shall not  
27 commence until the agent and contractor agree in writing on a fixed price or  
28 a guaranteed maximum price for the construction to be commenced.

29 F. As an alternative to subsection E of this section, an agent may  
30 award design-build construction services or job-order-contracting  
31 construction services as follows:

32 1. The agent shall use the selection committee appointed for the  
33 contract pursuant to subsection C of this section.

34 2. The agent shall issue a request for proposals to the persons or  
35 firms on the short list developed pursuant to subsection C of this section.

36 3. For design-build construction services and job-order-contracting  
37 construction services, the request for proposals shall include:

38 (a) The agent's project schedule and project final design and  
39 construction budget or life cycle budget for a procurement that includes  
40 maintenance services or operations services.

41 (b) A statement that the contract will be awarded to the offeror whose  
42 proposal receives the highest number of points under a scoring method.

43 (c) A description of the scoring method, including a list of the  
44 factors in the scoring method and the number of points allocated to each  
45 factor. The factors in the scoring method shall include:



1 (i) For design-build construction services only, demonstrated  
2 compliance with the design requirements.

3 (ii) Offeror qualifications.

4 (iii) Offeror financial capacity.

5 (iv) Compliance with the agent's project schedule.

6 (v) For design-build construction services only, if the request for  
7 proposals specifies that the agent will spend its project budget and not more  
8 than its project budget and is seeking the best proposal for the project  
9 budget, compliance of the offeror's price or life cycle price for  
10 procurements that include maintenance services, operations services or  
11 finance services with the agent's budget as prescribed in the request for  
12 proposals.

13 (vi) For design-build construction services if the request for  
14 proposals does not contain the specifications prescribed in item (v) and for  
15 job-order-contracting construction services, the price or life cycle price  
16 for procurements that include maintenance services, operations services or  
17 finance services.

18 (vii) An offeror quality management plan.

19 (viii) Other evaluation factors as determined by the agent, if any.

20 (d) For design-build construction services only, the design  
21 requirements.

22 (e) A requirement that each offeror submit separately a technical  
23 proposal and a price proposal and that the offeror's entire proposal be  
24 responsive to the requirements in the request for proposals. For  
25 design-build construction services, the price in the price proposal shall be  
26 a fixed price or a guaranteed maximum price.

27 (f) A statement that in applying the scoring method the selection  
28 committee will separately evaluate the technical proposal and the price  
29 proposal and will evaluate and score the technical proposal before opening  
30 the price proposal.

31 (g) If the agent conducts discussions pursuant to paragraph 5 of this  
32 subsection, a statement that discussions will be held and a requirement that  
33 each offeror submit a preliminary technical proposal before the discussions  
34 are held.

35 4. If the agent determines to conduct discussions pursuant to  
36 paragraph 5 of this subsection, each offeror shall submit a preliminary  
37 technical proposal to the agent before those discussions are held.

38 5. If determined by the agent and included by the agent in the request  
39 for proposals, the selection committee shall conduct discussions with all  
40 persons or firms that submit preliminary technical proposals. Discussions  
41 shall be for the purpose of clarification to assure full understanding of,  
42 and responsiveness to, the solicitation requirements. Offerors shall be  
43 accorded fair treatment with respect to any opportunity for discussion and  
44 for clarification by the owner. Revision of preliminary technical proposals  
45 shall be permitted after submission of preliminary technical proposals and

1 before award for the purpose of obtaining best and final proposals. In  
2 conducting any discussions, information derived from proposals submitted by  
3 competing offerors shall not be disclosed to other competing offerors.

4 6. After completion of any discussions pursuant to paragraph 5 of this  
5 subsection or if no discussions are held, each offeror shall submit  
6 separately the offeror's final technical proposal and its price proposal.

7 7. Before opening any price proposal, the selection committee shall  
8 open the final technical proposals, evaluate the final technical proposals  
9 and score the final technical proposals using the scoring method in the  
10 request for proposals. No other factors or criteria may be used in the  
11 evaluation and scoring.

12 8. After completion of the evaluation and scoring of all final  
13 technical proposals, the selection committee shall open the price proposals,  
14 evaluate the price proposals, score the price proposals and complete the  
15 scoring of the entire proposals using the scoring method in the request for  
16 proposals. No other factors or criteria may be used in the evaluation and  
17 scoring.

18 9. The agent shall award the contract to the responsive and  
19 responsible offeror whose proposal receives the highest score under the  
20 method of scoring in the request for proposals. No other factors or criteria  
21 may be used in the evaluation.

22 10. The contract file shall contain the basis on which the award is  
23 made.

24 11. For design-build construction services only, the agent shall award  
25 a stipulated fee equal to a percentage, as prescribed in the request for  
26 proposals, of the agent's project final design and construction budget, as  
27 prescribed in the request for proposals, but not less than two-tenths of one  
28 per cent of the project final design and construction budget to each short  
29 list offeror who provides a responsive, but unsuccessful, proposal. If the  
30 agent does not award a contract, all responsive short list offerors shall  
31 receive the stipulated fee based on the owner's estimate of the project final  
32 design and construction budget as included in the request for proposals. The  
33 agent shall pay the stipulated fee to each offeror within ninety days after  
34 the award of the initial contract or the decision not to award a contract.  
35 In consideration for paying the stipulated fee, the agent may use any ideas  
36 or information contained in the proposals in connection with any contract  
37 awarded for the project, or in connection with a subsequent procurement,  
38 without any obligation to pay any additional compensation to the unsuccessful  
39 offerors. Notwithstanding the other provisions of this paragraph, an  
40 unsuccessful short list offeror may elect to waive the stipulated fee. If  
41 an unsuccessful short list offeror elects to waive the stipulated fee, the  
42 agent may not use ideas and information contained in the offeror's proposal,  
43 except that this restriction does not prevent the agent from using any idea  
44 or information if the idea or information is also included in a proposal of  
45 an offeror that accepts the stipulated fee.

1 G. Until an award and execution of a contract by an agent, only the  
2 name of each person or firm on the short list developed pursuant to  
3 subsection C of this section may be made available to the public. All other  
4 information received by the agent in response to the request for  
5 qualifications or contained in the proposals shall be confidential in order  
6 to avoid disclosure of the contents that may be prejudicial to competing  
7 offerors during the selection process. The proposals shall be open to public  
8 inspection after the contract is awarded and the agent has executed the  
9 contract. To the extent that the offeror designates and the agent concurs,  
10 trade secrets and other proprietary data contained in a proposal remain  
11 confidential.

12 H. An agent may cancel a request for qualifications or a request for  
13 proposals or reject in whole or in part any or all proposals as specified in  
14 the solicitation if it is in the best interest of the agent. The agent shall  
15 make the reasons for cancellation or rejection part of the contract file.

16 I. Notwithstanding any other law:

17 1. The contractor for construction-manager-at-risk, design-build or  
18 job-order-contracting construction services is not required to be registered  
19 to perform design services pursuant to title 32, chapter 1 if the person or  
20 firm actually performing the design services on behalf of the contractor is  
21 appropriately registered.

22 2. The contractor for construction-manager-at-risk, design-build or  
23 job-order-contracting construction services is not required to be licensed  
24 to perform construction pursuant to title 32, chapter 10 if the firm actually  
25 performing the construction on behalf of the contractor is appropriately  
26 licensed.

27 3. FOR EACH PROJECT FOR HORIZONTAL CONSTRUCTION UNDER A DESIGN-BUILD  
28 OR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES CONTRACT, THE LICENSED  
29 CONTRACTOR PERFORMING THE CONTRACT SHALL PERFORM, WITH THE CONTRACTOR'S OWN  
30 ORGANIZATION, CONSTRUCTION WORK THAT AMOUNTS TO NOT LESS THAN FORTY-FIVE PER  
31 CENT OF THE TOTAL CONTRACT PRICE FOR CONSTRUCTION. FOR THE PURPOSES OF THIS  
32 PARAGRAPH, THE TOTAL CONTRACT PRICE FOR CONSTRUCTION DOES NOT INCLUDE THE  
33 COST OF PRECONSTRUCTION SERVICES, DESIGN SERVICES OR ANY OTHER RELATED  
34 SERVICES OR THE COST TO PROCURE ANY RIGHT-OF-WAY OR OTHER COST OF  
35 CONDEMNATION.

36 J. For job-order-contracting construction services only:

37 1. The dollar amount of an individual job order shall not be more than  
38 the amount set by the agent in an action noticed pursuant to title 38,  
39 chapter 3, article 3.1 or a rule adopted by the agent as the maximum amount  
40 of an individual job order. This maximum amount shall not be more than seven  
41 hundred fifty thousand dollars. Requirements shall not be artificially  
42 divided or fragmented in order to constitute a job order that satisfies this  
43 requirement.

44 2. If the contractor subcontracts or intends to subcontract part or  
45 all of the work under a job order and if the job order construction services

1 contract includes descriptions of standard individual tasks, standard unit  
2 prices for standard individual tasks and pricing of job orders based on the  
3 number of units of standard individual tasks in the job order:

4 (a) The contractor has a duty to deliver promptly to each  
5 subcontractor invited to bid a coefficient to the contractor to do all or  
6 part of the work under one or more job orders:

7 (i) A copy of the descriptions of all standard individual tasks on  
8 which the subcontractor is invited to bid.

9 (ii) A copy of the standard unit prices for the individual tasks on  
10 which the subcontractor is invited to bid.

11 (b) If not previously delivered to the subcontractor, the contractor  
12 has a duty to deliver promptly the following to each subcontractor invited  
13 to or that has agreed to do any of the work included in any job order:

14 (i) A copy of the description of each standard individual task that  
15 is included in the job order and that the subcontractor is invited to  
16 perform.

17 (ii) The number of units of each standard individual task that is  
18 included in the job order and that the subcontractor is invited to perform.

19 (iii) The standard unit price for each standard individual task that  
20 is included in the job order and that the subcontractor is invited to  
21 perform.

22 K. Notwithstanding anything to the contrary in this chapter:

23 ~~1. Each project for horizontal construction under a design-build~~  
24 ~~construction services contract and each project for horizontal construction~~  
25 ~~services under a construction-manager-at-risk construction services contract~~  
26 ~~shall be a specific, single project with a minimum construction cost of ten~~  
27 ~~million dollars. The estimated cost of the project shall not include the~~  
28 ~~cost to procure any right-of-way or other cost of condemnation.~~

29 ~~2. 1. An agent shall not procure any horizontal construction using~~  
30 ~~the construction-manager-at-risk, design-build or job-order-contracting~~  
31 ~~method of project delivery after June 30, 2007 2010. For purposes of this~~  
32 ~~paragraph, an agent procures horizontal construction when the contract for~~  
33 ~~the construction services is executed by the agent and the contractor for the~~  
34 ~~construction-manager-at-risk, design-build or job-order-contracting~~  
35 ~~construction services. If a contract is executed for construction services~~  
36 ~~on or before June 30, 2007 2010, construction services under the contract may~~  
37 ~~be rendered in whole or in part after June 30, 2007 2010.~~

38 ~~3. 2. Each project under a design-build construction services~~  
39 ~~contract or a construction-manager-at-risk construction services contract~~  
40 ~~shall be a specific, single project. For the purposes of this paragraph,~~  
41 ~~"specific, single project" means a project that is constructed at a single~~  
42 ~~location, at a common location or for a common purpose.~~

43 L. Notwithstanding anything to the contrary in this section or this  
44 title, an agent shall not:

1        1. Enter into a contract as contractor to provide  
2 construction-manager-at-risk construction services, design-build construction  
3 services or job-order-contracting construction services.

4        2. Contract with itself, with another agent, with this state or with  
5 any other governmental unit of this state or the federal government for the  
6 agent to provide construction-manager-at-risk construction services,  
7 design-build construction services or job-order-contracting construction  
8 services.

9        M. The prohibitions prescribed in subsection L of this section do not  
10 prohibit an agent from providing construction for itself as provided by law.

11        N. For the purposes of this section, "professional services" includes  
12 architect services, engineer services, landscape architect services, assayer  
13 services, geologist services and land surveying services and any combination  
14 of those services.

**APPROVED BY THE GOVERNOR APRIL 7, 2003.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2003.**

Passed the House March 24, 20 03,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Jake Flake  
Speaker of the House

Norman L. Fyore  
Chief Clerk of the House

Passed the Senate February 25, 20 03,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett  
President of the Senate

Chaimin Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

       day of       , 20      ,

at        o'clock        M.

        
Secretary to the Governor

Approved this        day of

      , 20      ,

at        o'clock        M.

        
Governor of Arizona

S.B. 1236

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this        day of       , 20      ,

at        o'clock        M.

        
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 2, 2003,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2003

at 12:30 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 7 day of

April, 2003,

at 2<sup>30</sup> o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2003

at 4:27 o'clock P. M.

[Signature]  
Secretary of State

S.B. 1236